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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,514	10/12/2001	Darrell Meyer	344.07-US-1 3496 EXAMINER	
34284	7590 11/16/2004			
ROBERT D. FISH			YIP, WINNIE S	
RUTAN & TUCKER LLP 611 ANTON BLVD 14TH FLOOR			ART UNIT	PAPER NUMBER
COSTA MES	SA, CA 92626-1931		3637	
			DATE MAILED: 11/16/200	4

Please find below and/or attached an Office communication concerning this application or proceeding.

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<i>(</i>		1			
Office Action Summary	09/890,514	MEYER, DARRELL			
Office Action Summary	Examiner	Art Unit			
The MAILING DATE of this communication ann	Winnie Yip	3637			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply is specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).					
Status					
1) Responsive to communication(s) filed on 23 Au	<u>ıgust 2004</u> .				
2a)⊠ This action is FINAL . 2b)□ This	action is non-final.				
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims		•			
 4) Claim(s) 29-40 and 42-58 is/are pending in the application. 4a) Of the above claim(s) 43-56 is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) 29-40,42,57 and 58 is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. 					
Application Papers					
9) The specification is objected to by the Examiner.					
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.					
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).					
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).					
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.					
Priority under 35 U.S.C. § 119					
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 					
Attachment(s)					
1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)					
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 5) Notice of Informal Patent Application (PTO-1449 or PTO/SB/08)					
Paper No(s)/Mail Date	6) Other:	atom repriouson (1 10-102)			

Part II DETAILED ACTION

This office action is in response to applicant's amendment filed on August 23, 2004.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Response to Amendment

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 47 (as previously added) and 48 (New) have been renumbered 57-58 respectively.

- 2. The amendment to the claims filed on August 23, 2004 does not comply with the requirements of 37 CFR 1.121(c) because the list of the claims is not corrected. See the following correction:
 - a. Claims 1-28 was canceled by amendment filed July 30, 2001.
 - b. Claim 41 has been deleted as indicated by applicant's amendment filed August 23,2004. See page 4.
 - c. Claims 43-56 have been withdraw. See Office letter mailed August 16, 2002 and applicant's response filed November 14, 2002.
 - d. New claims 47 and 48 have renumbered as claims 57 (previously presented) and 58 (new).

Therefore, claims 29-40 and 42-58 are pending in the application. However, claims 43-56 have been withdraw for further consideration.

Claim Rejections - 35 USC § 103

3. Claims 29-37, 39-40, 42, and 57-58 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Buecker (US Patent No. 6,131,362) in view of Bodnar (US Patent No. 5,207,045)

Buecker shows and discloses a metal weight beam (10) which is capable used as a joist, said weight beam (10) comprising two chords (12, 14) having a polygonal cross-section with 5 planar sides which has a shape of irregular pentagon as claimed, a web (16) connected and extending between the chords, the web (16) having a plurality of openings (74), the web and the chords being formed by a single rolled sheet approximately 20-gauge steel (see col. 4, lines 10-21), the chord being formed from a continuous piece with a height greater than a width, and the weight beam inherently having a span extending from end to end (50) being greater than its height (see Fig. 1). However, Buecker does not define the web including stabilizing members being set of flanges that are projecting outward from punched out the openings on the web, and the punched out openings comprising at least forty percent of the area of the web as claimed. Bodnar teaches a metal beam (i.e., 30) having two triangular chords (46, 48, 50) connected by a web (44), said web having a plurality spaced apart stabilizing members (i.e., 68) which are formed by punched out openings (60) with flanges (68) projecting outward the web and substantially normal to the span of the beam, wherein the openings substantially formed at least forty percent of the area of the web. It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the weight beam of Buecker having the web

formed with a plurality of punched out openings at least 40 percent of the area of the web and having flanges projecting outward formed the opening and normal to the span of the beam as taught by Bodnar to provide stabilizing members on the web for providing a light-weigh beam with stable properties.

4. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buecker '362 in view of Bodnar '045 as applied to claims 29 and 31 above, and further in view of Brooks (US Patent No. 991,603).

Buecker in view of Bodnar teach all the limitation of the claimed invention as explained and applied above rejections except that either Buecker or Bodnar do not teach the beam having at least one chord being filled with a fill material. Brooks teaches a beam comprising two triangular chords (20) being connected by a web (19), wherein the chords are filled by heat resisting material (75). It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the beam of Buecker combined with Bodnar having at least one chord being filled with suitable filling material such as heat resisting material as taught by Brooks for providing the beam with additional weight.

Response to Amendment

5. Applicant's arguments filed August 23, 2004 have been fully considered but they are not deemed persuasive.

First, in response to applicant's argument of that cited references fail to teach or suggest all of the limitations suggested by the applicant's invention, we agree that this is so, otherwise our rejection would have been entered under section U.S.C. 102 of the statute.

Second, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, applicant only claims a weight bearing element, Bodnar and Buecker both teach a weight bearing element having substantial limitation as claimed, and both teach the weight bearing element can be used to joint with other beams, either to be used as a stud, therefore, it is examiner's position that the beams of Bodnar and Buecker are capable used in same art and are capable to be combined as a joist to solve the same problem as claimed.

Therefore, the rejections under over Buecker '362 in view of Bodnar '045 and Brooks are deemed proper.

ACTION IS FINAL

6. Applicant's amendment necessitated the new grounds of rejection. Accordingly, THIS ACTION IS MADE FINAL. See M.P.E.P. '706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. '1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. '1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Inquiry Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Winnie Yip Primary Examiner Page 6

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wsy

November 11, 2004